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IN THE (1)  
Supreme Court of the United States

APR 9 1946

CHARLES ELMORE GROPPLEY  
CLERK

October Term 1945  
No. 1091

Los ANGELES SOAP COMPANY, a Corporation,

*Petitioner,*

*vs.*

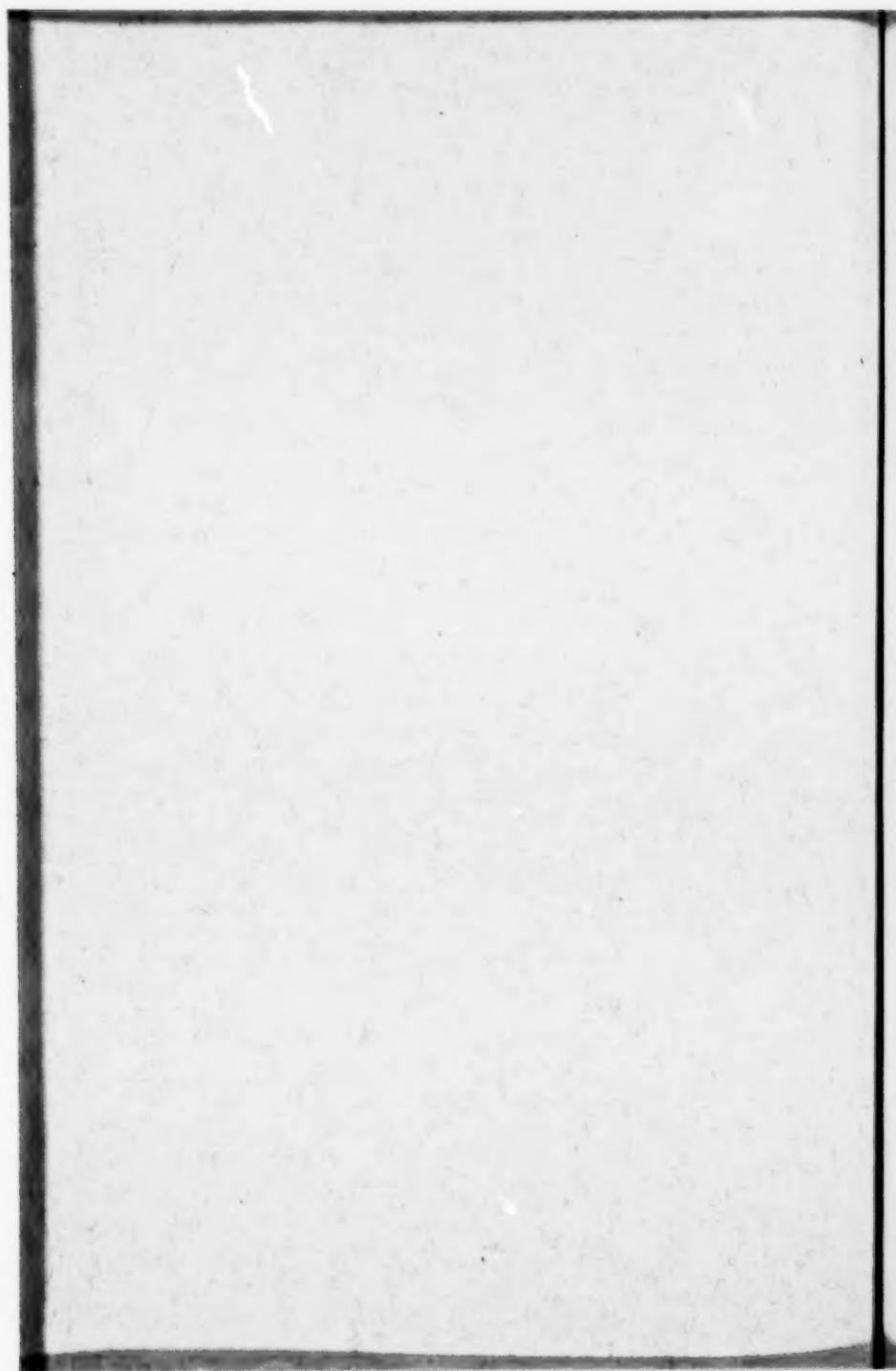
UNITED STATES OF AMERICA,

*Respondent.*

Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Ninth Circuit,  
and Brief in Support Thereof.

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IN THE  
**Supreme Court of the United States**

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October Term, 1945

No.....

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LOS ANGELES SOAP COMPANY, a Corporation,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA,

*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI.**

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*To the Honorable, the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

The petition of Los Angeles Soap Company, a corporation, respectfully represents:

**Summary Statement of Matter Involved.**

The controversy here involved concerns the right of the Petitioner to recover interest collected by a collector of internal revenue on a tax on the first domestic processing of cocoanut oil of Philippine origin. [R. 7, 9.]

The Los Angeles Soap Company, the Petitioner, is the manufacturer of soap, and in the manufacture of its product it used a large quantity of cocoanut oil of Philippine origin.

In 1934, the Congress of the United States passed the Revenue Act of 1934. This provided, among other things, for a tax of 3¢ per pound upon the first domestic processing of cocoanut oil derived from the Philippine Islands. The Act provided that all taxes collected under Section 602½ of the Act with respect to cocoanut oil derived from the Philippine Islands should be held as a separate fund and paid to the Treasury of the Philippine Islands. (See appendix hereto.)

A number of soap companies in the United States who processed cocoanut oil of this origin were of the belief that the provisions of Section 602½ of the Revenue Act of 1934 were unconstitutional. Among these was the Petitioner herein. It instituted an action in the District Court of the United States in and for the Southern District of California, Central Division, against Nat Rogan, as Collector of Internal Revenue, to enjoin the collection of the said processing tax and for declaratory relief upon the ground that the tax so levied was unconstitutional in that it was not to pay the debts of the United States nor for the general welfare of the United States. This action was No. 835-Y in Equity and was entitled "Los Angeles Soap Company, a corporation, Plaintiff, vs. Nat Rogan, individually and as Collector of Internal Revenue for the Sixth Collection District of California."

[R. 29.]

Under date of February 11, 1936, the District Court of the United States, in the said proceeding in Equity No. 835-Y, issued a temporary restraining order restraining the said Nat Rogan and others acting under him from collecting or attempting to collect the tax imposed by said Section 602½ of the Revenue Act of 1934. Said tem-

porary restraining order provided among other things as follows:

“Plaintiff, however, to continue to file monthly returns with the defendant.

Provided, however, that the plaintiff, Los Angeles Soap Company, give security in the amount of the said exactions claimed to have become due on the 31st day of January, 1936, in the sum of \$28,618.48, said security to be in the form of a Cashier’s Check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, Clerk of the United States District Court, Southern District of California, said check to be deposited in the Registry of the Court by the said Clerk pending the further order of this Court, and *to deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns.*” (Italics supplied.)

Under this order, the Petitioner herein deposited in the registry of the U. S. District Court, in accordance with said order, three payments aggregating \$107,221.49. After hearing the matter, the District Court entered a decree denying the injunction and dismissing the cause. [R. 31.]

The Petitioner then presented its petition for an appeal from the decree to the United States Circuit Court of Appeals for the Ninth Circuit, praying that all proceedings be stayed by supersedeas. On April 14, 1936, the said District Court made an order granting the prayer of the Petitioner herein and allowing the appeal and restraining the Collector from proceeding against the

Petitioner. The said order provided among other things as follows:

"Provided, However, that the plaintiff, pending the said appeal, shall in accordance with the Revenue Laws of the United States, continue to file with the defendant as Collector of Internal Revenue monthly returns of the tax imposed by Section 602½ of the Revenue Act of 1934, and Provided Further, However, that *the plaintiff will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by such monthly returns*, and in the event of the failure of the plaintiff to file said returns or deposit said moneys within ten (10) days after said time this order shall thereupon terminate insofar as it supersedes and suspends the order and decree of April 1st, 1936, and insofar as it enjoins and restrains the defendant as herein-before provided." (Italics supplied.)

Pursuant to this last-mentioned order, the Petitioner made thirteen payments into the registry of the District Court, the said thirteen payments aggregating the amount of \$541,653.05. The total amount of all payments made into the registry of the Court under the two said orders was \$648,874.54. [R. 32.]

While the Petitioner's appeal was pending in Case No. 835-Y, the identical question was determined by the Supreme Court of the United States in the case of the *Cincinnati Soap Company v. United States*, 301 U. S. 308, which held that Section 602½ of the Revenue Act of 1934 was constitutional.

Shortly after the *Cincinnati Soap Company* case was decided, the Circuit Court of Appeals, on motion of the Petitioner herein, dismissed the Petitioner's appeal in Case No. 835-Y.

Under date of June 8, 1937, the District Court made and entered a decree spreading the mandate and dissolving the injunction and ordering the disposition of funds deposited in the registry of the Court. This decree provided, among other things, that the sum of \$648,-874.54 deposited in the registry of the Court should be delivered to Nat Rogan as Collector of Internal Revenue, "to be applied against any tax now due from plaintiff under Section 602½ of the Revenue Act of 1934 without prejudice to the assertion against any deficiency in tax or interest upon such tax \* \* \* and without prejudice to the assertion by plaintiff of no deficiency in tax or interest upon such tax." [R. 36.]

Thereafter the said Nat Rogan, as Collector, insisted that the Petitioner herein owed interest upon the various amounts which it had paid into the registry of the Court as hereinbefore set forth, and demanded of the Petitioner that it pay to him, as such Collector of Internal Revenue, interest upon the various items making up the said sum of \$648,874.54. [R. 37.] The Petitioner herein denied that it owed any interest because the said excise taxes were paid into the registry of the Court pursuant to the tenor of the orders of the District Court and its returns were filed in due time and were not delinquent and the amounts shown by the said returns were paid before the same became delinquent. [R. 37.]

Notwithstanding these facts, the said Collector of Internal Revenue demanded and received from the Petitioner the sum of \$28,443.31 as interest upon the said amounts, and the Petitioner herein, under compulsion, paid the said sum of \$28,443.31 as interest as aforesaid on July 7, 1937. [R. 37.]

In due time, Petitioner filed its claim for a refund of the interest so collected, which claim was rejected, and the present litigation was instituted in the United States District Court for the Southern District of California, Central Division, for the purpose of recovering the amount so paid as interest. [R. 37, 38.]

After trial in the District Court, judgment was rendered in favor of the Petitioner in the sum of \$28,372.06, with interest thereon at the rate of 6% per annum from July 7, 1937. [R. 61, 62.] From this judgment, the Respondent herein perfected an appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit.

The United States Circuit Court of Appeals for the Ninth Circuit reversed the judgment of the United States District Court upon the ground that the deposit in court of the amount of the tax did not constitute payment, leaving other questions raised by the Petitioner undetermined.

The Petitioner presented a petition for a rehearing by the United States Circuit Court of Appeals for the Ninth Circuit, which was denied on March 1, 1946. Upon petition, the United States Circuit Court of Appeals granted an order staying the issuance of its writ of mandate to and including April 8, 1946, and until after the Supreme Court of the United States should pass upon a petition for writ of certiorari.

**Jurisdiction.**

1. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as Amended by the Act of February 13, 1925, chap. 229, 43 Stat. 938, 28 U. S. C. A. Sec. 347; Rev. Stat. Sec. 1008 as amended, 28 U. S. C. A. Sec. 350.
2. The date of the entry of the judgment of the Circuit Court of Appeals of the Ninth Circuit herein sought to be reviewed is January 29, 1946. The date of the denial of the Petitioner's petition for rehearing is March 1, 1946.

**Questions Presented.**

1. Did the Circuit Court of Appeals for the Ninth Circuit err in holding that the District Court erred in holding that the deposits made by the taxpayer constituted payments of its taxes?
2. Did the Circuit Court of Appeals err in holding that the deposits made in action No. 835-Y were in the nature of a cash bond and carried no more significance than the giving of a surety bond, and that such deposits were not payment?
3. Did the Circuit Court of Appeals err in holding that no payment of the taxes in question was made until June 8, 1937?
4. Did the Circuit Court of Appeals err in holding that the Petitioner was liable for interest on the amounts of the taxes deposited in the registry of the District Court in action 835-Y pursuant to valid orders of that Court?

5. Did the Circuit Court of Appeals err in holding that the United States of America was entitled to interest on monies that did not belong to it?
6. Did the Circuit Court of Appeals err in failing to pass upon all questions raised by the Petitioner?
7. Did the Circuit Court of Appeals err in failing to hold that the monies deposited in the registry of the Court in action 835-Y were in *custodia legis* and therefore were not subject to interest?
8. Did not the Circuit Court of Appeals err in holding that the Petitioner was liable for interest upon the excise tax upon the first domestic processing of cocoanut oil?

#### **Reasons Relied on for the Allowance of the Writ.**

The decision of the Circuit Court of Appeals in holding that the Petitioner was liable for interest on the first domestic processing of cocoanut oil of Philippine origin is contrary to a long-established rule of law that where one owing a monetary obligation pays the same into court, interest stops. In this particular case, the Petitioner was exercising its constitutional right to question the validity of Section 602½ of the Revenue Act of 1934. Owing to the peculiar provision that the impost levied under this section should be held separate and apart in a fund and paid over to the Government of the Philippine Islands, there was imminent danger that the amounts collected under the provisions of the section would be paid over to the Government of the Philippine Islands and would be lost forever to the Petitioner. The United States District Court, in the previous case, apparently recognized this danger and enjoined the collection of the

tax. Under valid orders of the Court, the exact amount of the tax shown by the returns was paid into the registry of the Court, and when the question was ultimately determined the funds so deposited were delivered to the collector of internal revenue to the exact penny.

The decision of the Circuit Court of Appeals is contrary to the long-established rule that such payments into the registry of the Court will stop the running of interest, as, for example, in the case of amounts deposited in court in condemnation proceedings and in interpleader proceedings.

The Petitioner feels that the action of the Collector in exacting interest in a case where it had lost the use of the money and the United States Government was not entitled to the use of the money was harsh and oppressive, and, as Judge Fee, in his opinion in the District Court in the instant case, said, "Here the attitude of the Collector seems to border on the vindictive." [R. 45.]

The Petitioner feels that the Circuit Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by your honorable Court, and that the Circuit Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of your honorable Court's power of supervision.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of your honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to your honorable Court, on a day certain to be therein named, a full and complete transcript of the record of all proceedings

in the case of United States of America, Appellant, vs. Los Angeles Soap Company, a Corporation, Appellee, bearing docket number 11,032, to the end that the judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reviewed and reversed by your honorable Court; and for such other and further relief as may seem meet and proper in the premises.

And your Petitioner will ever pray, etc.

Dated Los Angeles, California, March 27, 1946.

LOS ANGELES SOAP COMPANY,

By ISIDORE B. DOCKWEILER,

THOMAS A. J. DOCKWEILER,

*Attorneys for Petitioner.*

The undersigned counsel of record hereby certify that the foregoing petition is well founded and is not interposed for the purpose of delay.

ISIDORE B. DOCKWEILER,

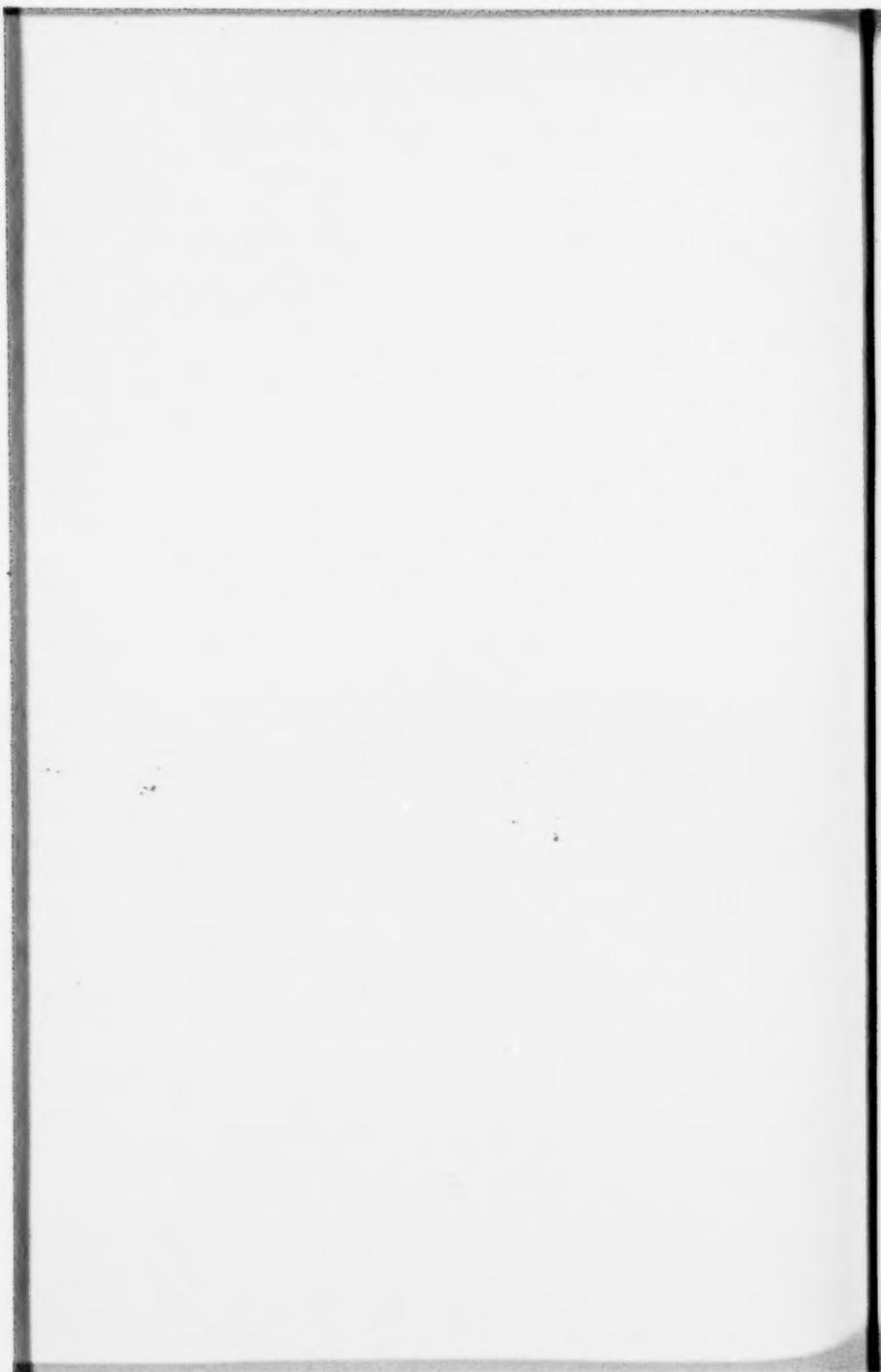
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*Of Counsel.*





IN THE  
**Supreme Court of the United States**

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OCTOBER TERM, 1945.

No. .....

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LOS ANGELES SOAP COMPANY, a Corporation,  
*Petitioner*,

*vs.*

UNITED STATES OF AMERICA,  
*Respondent*.

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**BRIEF IN SUPPORT OF PETITION FOR WRIT  
OF CERTIORARI.**

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**Opinions of the Courts Below.**

The judgment of the United States District Court for the Southern District of California, Central Division, was favorable to the Petitioner. The opinion of the District Court is dated March 28, 1944. It is reported in 56 Fed. Supp. 260. [R. 30.]

The judgment of the Circuit Court of Appeals for the Ninth Circuit in the matter was adverse to the Petitioner. The opinion of the Circuit Court is reported in ..... F. (2d) ..... The opinion is dated January 29, 1946, and was filed on the same date. [R. 90.] The case has not been reported to date.

For the convenience of the Court, the Petitioner annexes hereto in the appendix copies of the opinions of the Dis-

trict Court and of the Circuit Court of Appeals for the Ninth Circuit.

A petition for rehearing was denied by the Circuit Court of Appeals on March 1, 1946. [R. 99.]

#### **Jurisdiction.**

1. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended, 43 Stat. 938, 28 U. S. C. A., Sec. 347; Rev. Stat., Sec. 1008 as amended, 28 U. S. C. A., Sec. 350.

2. The date of entry of the judgment of the Circuit Court of Appeals for the Ninth Circuit herein sought to be reviewed is January 29, 1946. [R. 98, 99.] The petition for rehearing was denied on March 1, 1946. [R. 99.]

#### **Statement of the Case.**

The facts have been set forth in the foregoing petition, to which reference is made to avoid duplication.

The District Court, in the previous litigation, made two valid orders directing the Petitioner to deposit monthly in the registry of the Court the amounts of tax shown by its monthly returns, before delinquency.

#### **Assignments of Error.**

1. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the deposits made by the taxpayer did not constitute payments of taxes, as was held by the District Court.

2. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the deposits made in the previous litigation were in the nature of a cash bond and carried no more significance than the giving of a surety bond, and that such deposits were not payment.
3. The Circuit Court of Appeals for the Ninth Circuit erred in holding that no payment of the taxes in question was made until June 8, 1937.
4. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the petitioner was liable for interest on the amounts of taxes deposited in the registry of the Court in the previous litigation pursuant to valid orders of that Court.
5. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the United States of America was entitled to interest on monies that did not belong to it.
6. The Circuit Court of Appeals for the Ninth Circuit erred in failing to pass upon all questions raised by the Petitioner.
7. The Circuit Court of Appeals for the Ninth Circuit erred in failing to hold that the monies deposited in the registry of the Court in the previous litigation were in *custodia legis* and therefore not subject to interest.
8. The Circuit Court of Appeals for the Ninth Circuit erred in holding that the Petitioner was liable for interest upon the excise tax upon the first domestic processing of cocoanut oil.

### Summary of Argument.

Considerable research has failed to disclose any authority involving a state of facts such as exist in the present case. The monies which were paid into the registry of the Court were paid pursuant to the two orders mentioned on page 4 of the appellant's brief. The first order [R. 30] provided that plaintiff should continue to file monthly returns with the defendant and that it should give security in the amount of the exactions by check payable to the order of the United States District Court and that the check should be deposited in the registry of the Court pending the further order of the Court. The order further provided that the plaintiff should deposit such monthly amounts as might be disclosed by the monthly returns. Under this order three payments were made into the registry of the Court.

The decision of the District Court being adverse to the appellee herein, it took an appeal to the Circuit Court of Appeals for the Ninth Circuit. The District Court then made a second order, above mentioned, which provided that the soap company should continue to file its monthly returns and that it should "deposit in the Registry of the Court on or before the last day of each month the amount of tax disclosed by such returns." [R. 31.]

## ARGUMENT.

### I.

#### Monies in Custodia Legis Do Not Draw Interest.

In the previous litigation instituted for the purpose of testing the validity of Section 602½ of the Revenue Act of 1934, the Petitioner, in order to protect its rights in the fund and to forestall the payment of the fund into the hands of the Government of the Philippine Islands, was obliged to procure two orders of the District Court enjoining the collector from collecting the excise tax in question. [R. 29 and 31.] That there was merit to the Petitioner's contention, in that litigation, that the Section was invalid may be inferred from the fact that the Court granted the restraining orders in the face of the prohibition contained in Section 3224 of the Revised Statutes (26 U. S. C. A. Section 3653) against suits restraining the collection of taxes. The exact amount of the taxes shown by the monthly returns of the Petitioner filed with the Collector of Internal Revenue were paid into the registry of the Court under these orders before delinquency, and the monies, therefore, were in *custodia legis* and, following the general rule, should not have drawn interest. [R. 30 and 32.] This procedure was rendered necessary in order to protect the rights of the parties pending the determination by the Court of the validity or invalidity of Section 602½ of the Revenue Act of 1934.

II.

**Where a Litigant Owes a Monetary Obligation and  
He Pays the Same Into Court Under an Order of  
Court, the Running of Interest Is Suspended.**

It is a well established principle of law that when a debtor is directed by order of Court, or rule of law, to deposit the amount of the debt in Court, he is relieved of the payment of further interest while the fund remains in the hands of the Court.

In the case of *Thomas v. Western Car Company*, 149 U. S. 95, at p. 116, the Supreme Court said:

“As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in solvency, interest is not allowed on the claims against the funds. *The delay in distribution is the act of the law*; it is a necessary incident to the settlement of the estate.” (Italics supplied.)

In the case of *Bowman v. Wilson, Assignee*, 12 Fed. 864, C. C. W. D. Mo., the Court, speaking of bankruptcy proceeding, said:

“Interest is allowed on the ground that the debtor is in default and has the use of the claimant’s money. It is never allowed where, by order of a Court of competent jurisdiction, or by the interposition of the law or the act of the creditor, payment of a debt has been prevented. During the continuance of such prevention, the interest does not run. If a fund is in custody of the law—in possession of the Court—and cannot be paid out without the order of the Court, it does not ordinarily bear interest.” *See, also*, 33 C. J. 244 (152).

To the same effect is *Lilley v. Insurance Company*, 92 Mich. 153, p. 158.

In the case of *Franklin Bank, et al. v. Bruns*, 84 Ohio 12, a fund was paid into Court in compliance with an or-

der of interpleader. It was held that a decree distributing the fund should not bear interest. This case is also reported in *Ann. Cas.* 1912B, at page 1002. To the same effect, also, is the case of *Chase v. Skepner*, 134 Cal. App. 453. A collection of cases on the proposition that interest is suspended when funds are deposited in Court pursuant to an order, will be found at page 1004, *Ann. Cas.* 1912B.

This principle is well exemplified by the practice in condemnation suits where the Government deposits the estimated fair value of lands in the Registry of the Court and a decree of taking is entered at the time of the institution of the litigation. Interest immediately stops on any amount so deposited. If, upon the trial of the case, the award is in excess of the amount deposited, interest will be collectible on the amount of the deficiency and the minute any such deficiency is deposited in the Registry of the Court, interest on such deficiency immediately stops. It needs no citation of authority to establish this fact. The same rule holds true in the case of amounts deposited in interpleader cases and in bankruptcy and receivership cases where a fund is in the hands of the Court and in instances where attachment or trustee process prevents the payment of money. Examples of these types will be found cited in *Ann. Cas.* 1912B, p. 1004.

It may well be asked if the situation of the parties had been reversed in the injunction proceedings, *i. e.*, if the plaintiff in that case had been successful in maintaining that the section in question was unconstitutional, and the fund in the hands of the Court had been returned to the soap company, would the Government agree that the soap company would have been entitled to interest by reason of the loss of the use of the money while it remained in the Registry of the Court?

III.

**The Petitioner Lost the Use of the Monies Paid Into the Registry of the Court.**

Interest may be defined as compensation paid for the use of money or as a penalty for the detention of a debt. (Vol. 22, *Words and Phrases* (Perm. Ed.), pp. 107 and 117.) Neither aspect of this definition is applicable to the present case.

In compliance with the orders of the trial court, the soap company paid into the Registry of the Court the exact amounts of the tax shown by each of its monthly returns. From the moment of the deposit of each such amount, the soap company completely lost the use of that money. Not only did it lose the amount so deposited, but it further cost it the sum of 1% of the amounts so deposited. In this instance, this 1% amounted to \$6,488.75. Therefore it cannot be contended that the interest exacted by the Collector was for the use of the money by the appellee. On the other hand, it can hardly be contended that the interest was exacted on the theory that it was a penalty inflicted for the detention of the monies. The appellee did not detain the monies. It paid the monies, with the exception of the amount pertaining to December, 1935, before they became due. It was the interposition of the orders of the Court which prevented the delivery of the funds direct to the Collector.

It appears significant that while Section 602½(f) of the Revenue Act of 1934 provides for the imposition of penalties, the Collector did not attempt to collect any penalty although he contended the taxes were delinquent. Why he insisted on interest on the theory that the taxes were delinquent, but did not insist upon the payment of a penalty for the same reason, is not altogether clear.

IV.

**The Respondent Did Not Lose the Use of the Monies While They Were in the Registry of the Court.**

The Government of the United States was not entitled to use the monies raised by the imposition of the processing tax imposed by Section 602½ of the Revenue Act of 1934, nor could it use those funds for the defraying of Government expenditures by the very terms of the section. Reference to subsection (a) of Section 602½ of the Revenue Act of 1934 (see appendix) discloses the rather peculiar and unusual provision that follows:

“All taxes collected under this section with respect to cocoanut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund *and paid to the Treasury of the Philippine Islands, \* \* \**”  
(Italics supplied.)

The processing tax which the Petitioner paid was imposed with respect to the first processing of cocoanut oil which said oil was either wholly the product of the Philippine Islands or was produced wholly from materials grown or produced in the Philippine Islands. [R. 29.] It is quite evident from this provision that Congress did not intend to permit the Government to use for its benefit or to defray its expenditures any of the monies raised by the particular tax in question. On the contrary, it is clear that it was intended that the funds so raised should be earmarked and kept apart from general funds of the United States and be paid over to the Treasury of the Philippine Islands. It is therefore erroneous to say that the Government of the United States was deprived of the use of the funds which were paid into Court by the plaintiff herein. Certainly if it was not deprived of the use of those funds it would not be entitled to interest as a compensation for the loss of the use of the funds.

V.

**The Petitioner Should Not Be Penalized for Exercising Its Right to Question the Constitutionality of Section 602½ of the Revenue Act of 1934.**

It is a self-evident proposition that the Petitioner had the right to institute the proceeding for the purpose of determining the question of whether or not Section 602½ of the Revenue Act of 1934 was constitutional. There was a bona fide doubt as to the constitutionality of that provision. A number of soap companies throughout the United States entertained this doubt because of the peculiar disposition to be made of the funds to be raised by that provision. The contention was made that it did not appear that the imposition of the tax was for the purpose of raising revenue for the general welfare of the United States nor for the purpose of paying its debts as those terms are used in Article I, Section 8, Clause 1 of the Federal Constitution. That this contention was made in good faith is borne out by the fact that the District Court enjoined the collection of the tax during pendency of the proceedings in the lower court, and while the appeal in the Circuit Court of Appeals was pending for the purpose of determining the question of the constitutionality of the section.

While the Petitioner's appeal was pending in the Ninth Circuit, the question was determined in the case of *Cincinnati Soap Company v. United States*, 301 U. S. 308, in which case it was held that the word "debt" was broad enough to include a moral obligation. Very soon after the *Cincinnati Soap* case was decided, counsel for the Petitioner herein advised the Circuit Court of the decision and the decree of the lower court in the injunction case instituted by the plaintiff was promptly sustained. [R. 70.]

VI.

**The Petitioner Should Not Be Penalized for the Delay in Turning the Funds Over to the Collector.**

It will be noted that the total amount paid into the registry of the District Court in the previous litigation under its two orders was \$648,874.54. [R. 32.] Of this amount only \$107,221.49 was paid before trial under the first, or temporary, restraining order. [R. 30.] The balance of \$541,653.05 was paid into the registry of the Court under the *supersedeas* order pending the determination of the issues by the Circuit Court of Appeals. [R. 32.]

The significance of these facts is that the appeal was pending in the Circuit Court for some sixteen months. This long delay was not of the making of the Petitioner herein; it was due to the normal processes of litigation. The legal fiction is that, theoretically, the Court acts *instanter* as of the date of the joinder of issue in the litigation, and the lapse of time between the date that issue was joined and the final determination of the Court is, for all practical purposes, ignored. The fact that an accumulation of business, or a "backlog," in the Circuit Court of Appeals results in a time lag in the ultimate determination of an appeal should not destroy the fiction.

Since the delay in time cannot be laid to the door of the Petitioner herein but was a normal incident to judicial procedures, it seems entirely inequitable to inflict a penalty upon the Petitioner when it had in fact lost the use of the monies just as effectively as if the same had been handed to the Collector of Internal Revenue instead of to the clerk of the District Court.

VII.

**The Circuit Court Erred in Holding That the Amounts Deposited in the Registry of the Court Were Security and Not a Payment of Taxes.**

As pointed out herein, the Circuit Court held that "the deposits were in the nature of a cash bond and carried no more significance than would the giving of a surety bond." [R. 97.] This holding was contrary to the facts of the case. There is a difference in the phraseology of the two orders directing the deposits. The first, or temporary, order provided that the Petitioner "give security in the amount of the said exactions claimed to have become due on the 31st of January, 1936, in the sum of \$28,618.48 \* \* \* and to deposit monthly amounts, hereafter, as may be disclosed by said monthly returns." [R. 30.] The order allowing the appeal as a *supersedeas* provided that the Petitioner "will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by said monthly returns." [R. 31.] (Italics supplied.) It was under this latter order that the sums aggregating \$541,653.05 were paid. The only amount which was paid into the Court as security was under the first order, and that was the sum of \$28,618.48, which became due on January 31, 1936. [R. 30.] It is perfectly apparent that the amounts, with the possible exception of the first amount, which were deposited in the Court were the *taxes* and *not a sum of money equivalent to the taxes*. The amounts which were so deposited were the actual subject of the controversy and were not equivalent to a surety bond, and it is respectfully submitted that the Circuit Court of Appeals for the Ninth Circuit fell into error in so holding.

VIII.

**Payment Into the Registry of the Court Constituted  
Payment of the Taxes.**

The Petitioner contends earnestly that the payment of the various amounts into the registry of the Court was, in fact, payment of the taxes. The amounts so paid were paid to an agent of the appellant for the uses and purposes set forth in Section 602½ of the Revenue Act of 1934, and since these payments were made before delinquency, with the exception of one payment relating to December, 1935, interest was not properly collectible upon the amounts so paid.

It is respectfully submitted that the exaction of interest in the instant case was tantamount to a denial of justice and equity to the Petitioner herein.

IX.

**The Circuit Court of Appeals Failed to Rule Upon  
All Questions Raised by the Petitioner.**

The Petitioner raised in the Circuit all of the questions raised herein. The Circuit Court of Appeals, however, passed upon only one of those issues, to-wit, that payment into the registry of the Court under the orders of the Court constituted payment of the tax.

The Petitioner respectfully maintains that it is entitled to have passed upon all the questions which it raised in the lower court for the reason that it maintains that all of the points raised were pertinent to a determination of the case.

It is respectfully submitted that a writ of certiorari should be granted.

ISIDORE B. DOCKWEILER,  
THOMAS A. J. DOCKWEILER,  
*Attorneys for Petitioner.*

FRANK MERGENTHALER,  
*Of Counsel.*





## APPENDIX.

Revenue Act of 1934, c. 277, 48 Stat. 680:

### Sec. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the

30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. *All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands*, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate. (Italics supplied.)

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the

Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

\* \* \* \* \*

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of Treasury of the United States.

### Opinion of the District Court.

In the District Court of the United States, Southern District of California, Central Division.

Los Angeles Soap Company, a corporation, Plaintiff, vs. United States of America, Defendant.

Opinion. March 28, 1944. James Alger Fee, District Judge.

This action is brought for the recovery of \$28,443.31 collected as interest upon certain taxes heretofore paid to the Collector of Internal Revenue by consideration of this court. The background for this action then, is a previous suit brought by the Los Angeles Soap Company against Nat Rogan as Collector of Internal Revenue of the appropriate district, for declaratory relief and for an injunction against the collection of the excise tax levied under Section 602½ of the Revenue Act of 1934 upon the first domestic processing of coconut oil. It was the claim of the soap company that the tax was unconstitutional and void. The matter came on for hearing before Honorable Leon R. Yankwich and on February 11, 1936, a temporary restraining order was entered which contained the following provisions:

“Plaintiff, however, to continue to file monthly returns with the defendant.

“PROVIDED, HOWEVER, that the plaintiff, LOS ANGELES SOAP COMPANY, give security in the amount of the said exactions claimed to have become due on the 31st day of January, 1936, in the sum of \$28,618.48, said security to be in the form of a Cashier’s Check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, Clerk of the United States District Court, Southern

District of California, said check to be deposited in the Registry of the Court by the said Clerk pending the further order of this Court, and to deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns."

Three payments were made under this order.

Thereafter, after a full hearing, Judge Yankwich, in an able opinion, found this section of the Act valid and the court without power to grant relief. An appeal was taken therefrom. In the order allowing appeal entered April 14, 1936, there were the following provisions relating to the deposits:

"PROVIDED, HOWEVER, that the plaintiff, pending the said appeal, shall in accordance with the Revenue Laws of the United States, continue to file with the defendant as Collector of Internal Revenue monthly returns of the tax imposed by Section 602½ of the Revenue Act of 1934, and PROVIDED FURTHER, HOWEVER, that the plaintiff will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by such monthly returns, and in the event of the failure of the plaintiff to file said returns or deposit said moneys within ten (10) days after said time this order shall thereupon terminate in so far as it supersedes and suspends the order and decree of April 1st, 1936, and in so far as it enjoins and restrains the defendant as hereinbefore provided."

Payments were made regularly under the terms of this order.

The Circuit Court of Appeals dismissed the appeal from the order of Judge Yankwich on May 25, 1937, and issued mandate thereon. Judgment entered on this, under date of June 8, 1937, and provided in part as follows:

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant's costs in the sum of Six Thousand Four Hundred Eighty-eight Dollars and Seventy-five Cents (\$6,488.75) in addition to the sum of Twenty-five Dollars and Fifty Cents (\$25.50) already taxed herein, be and the same are assessed against plaintiff;

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon payment of said costs, the said sum of Six Hundred Forty-eight Thousand Eight Hundred Seventy-four Dollars and Fifty-four Cents (\$648,874.54) deposited by plaintiff in the registry of this court, be delivered to Nat Rogan as Collector of Internal Revenue for the Sixth District of California, to be applied against any tax now due from plaintiff under Section 602½ of the Revenue Act of 1934 without prejudice to the assertion against any deficiency in tax or interest upon such tax as may appear upon an audit of plaintiff's accounts by the Treasury Department of the United States, and without prejudice to the assertion by plaintiff of no deficiency in tax or interest upon such tax.”

Thereafter the Collector demanded and received \$28,443.31 as interest upon the amounts totaling \$648,874.54 paid into the registry of the court by the soap company under order of court and by the court paid directly to the Collector.

There are no controlling decisions which have been called to the court's attention. The assessment of interest in the absence of a statute or a contract depends on the

equities even in a law action. No assessment thereof against the sovereign is possible without an express provision of law. The United States and the individual stand on entirely different footings as regards the assessment of interest against them.<sup>1</sup>

A consideration of the situation as shown by the orders of the court is as important as reconnaissance before a battle. The first time interest is mentioned is in the final judgment turning the fund over to the Collector. That provision amounts only to a general reservation of the question as to the principal sums and the interest. No question as to the amount of the principal sums has been raised. The sole purpose of these protective reservations must have been to release the fund to the Collector immediately without the necessity of computing the exact sum due.

The plaintiff, Los Angeles Soap Company, did not tender into court in the first instance, the amount of the tax due. If it had been permitted to retain this money and the use thereof, a sufficient ground would exist for the assessment of interest against it. The court on its own motion apparently wisely provided for the payment of these amounts into its registry according to the terms of the monthly returns. The interest of the United States was fully protected thereby. If the court had conceived the notion that the United States was entitled to any money in addition thereto at that time, in the event of ultimate determination favorable to it, unquestionably provision would have been made therefor. The court did not even in the original order, require the deposit of a sum

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<sup>1</sup>*United States v. North American Co.*, 253 U. S. 330.

equal to interest upon the first instalment of tax which was then about ten days overdue. This construction is strengthened by the terms of the second order granting the appeal in which no mention of interest occurs. The court, by the final judgment, turned over to the Collector the full sum exacted under the previous orders. Thereby, all the purposes of the United States were subserved. There was no expense or labor of collection and no chance of loss. The court therefore, must be deemed to have acted in the light of the usual rule that a payment into court prevents the further running of interest.<sup>2</sup> If there had been further damage<sup>3</sup> accruing to the United States, the court would have required security therefor when the fund was deposited. As it is, this primary order settled all questions arising as to the tax except the amounts so properly levied and deposited.

It is of interest to note that the United States, through the Clerk of this court, has apparently already collected from plaintiff \$6,488.75 or one per cent of this fund for the simple operation of retaining custody thereof.

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<sup>2</sup>*Franklin Bank v. Burns*, 84 Ohio State 12; Ann. Cas. 1912 B 1004, note at 1005.

<sup>3</sup>“Where money is retained by one man against the declared will of another who is entitled to receive it, and who is thus deprived of its use, the rule of courts in ordinary cases is, in suits brought for the recovery of the money, to allow interest as compensation to the creditors for such loss. Interest in such cases is considered as damages, and does not form the basis of the action, but is an incident to the recovery of the principal debt. The right of action is the right to compel the payment of the money which is being retained. When he who has this right commences an action for its enforcement, he at the same time acquires a subordinate right, incident to the relief which he may obtain, to demand and receive interest. If, however, the principal sum has been paid, so that, as to it, an action brought cannot be maintained, the opportunity to acquire a right to damages is lost.” *Stewart v. Barnes*, 153 U. S. 456, 462.

But it is objected that the ordinary rule does not apply here because the soap company is at fault.<sup>4</sup> No principle should be more firmly established than the right of the citizen to test the validity of measures taken, without his actual consent, by the government, against his property. No penalty should be invoked when he attempts, by the use of the courts, to prevent an alleged illegal exaction. Here the attitude of the Collector seems to border on the vindictive.

It is true that coercive measures must be present in order to assure prompt collection of the revenue. The provision in this law for interest upon unpaid installments must be classed as coercive in nature. But this principle is not applicable here. The taxpayer has not had the use of the money and no punishment should be inflicted for his attempt to have the matter legally settled. These payments were actually made by the taxpayer and were received by the United States. In the first instance, these were made conditioned upon the payments legally being due. But, if the tax was valid, the soap company could not get them back. No further coercion was necessary beyond the order of the district court.

The defendant cites as sole authority to the contrary *The Grape Shot*, 10 Fed. Cas. 987, Fed. Case No. 5,703 (Cir. Ct. La. 1874). But that opinion relates only to the question of whether interest should be paid on supplies and loans obtained on a bottomry bond in admiralty. The

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<sup>4</sup>The plaintiff in interpleader is really at fault because the money is not paid to the party entitled. Yet such a party is absolved upon deposit of the principal in court even though interest upon the sum so deposited would normally accrue according to the terms of an express contract. See *Franklin Bank v. Burns*, *supra*.

cause was tried before the war between the States. The decision was reversed by the Supreme Court of the United States and the cause sent back to the federal court long after the war in order to determine whether any of the items were properly chargeable against the bond. Of course the expression about interest, although not noticed by the Supreme Court, had no validity.

If the case means what some of the language removed from the context might indicate, it is sufficient to say it is contrary to the few federal cases which have touched on the subject.<sup>5</sup> The United States is not entitled to interest on amounts paid to its Collector, impounded in the registry of its own court, by order thereof.

There was, however, a sum of interest due upon the first litigated installment of the tax due January 31, 1936, to the date of the deposit of the principal in court which was protected by the reservations in the final judgment. Plaintiff is entitled to recovery of the entire sum in controversy with the exception of this sum of interest above mentioned.

Findings and judgment for plaintiff may be submitted.

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<sup>5</sup>*Himely v. Rose*, 9 U. S. 313; *Bowman v. Wilson*, 12 Fed. 864; *Groves v. Sentell*, 66 Fed. 179; *Potter v. Gardner*, 30 U. S. 718; *Fox v. Lofland*, 98 F. (2d) 589; *Spring v. South Carolina Ins. Co.*, 21 U. S. 268.

**Opinion of Circuit Court of Appeals.**

In the United States Circuit Court of Appeals for the Ninth Circuit.

United States of America, Appellant, vs. Los Angeles Soap Company, a corporation, Appellee. No. 11,032.

Jan. 29, 1946.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before Garrecht, Mathews and Healy, Circuit Judges.

Mathews, Circuit Judge.

Section 602½ of the Revenue Act of 1934, 26 U. S. C. A. Int. Rev. Acts, p. 778, provided:

“(a) There is hereby imposed upon the first domestic processing of coconut oil \* \* \* a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil \* \* \* except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil \* \* \* is wholly the production of the Philippine Islands or any other possession of the United States \* \* \* All taxes collected under this section with respect to coconut oil wholly of Philippine production \* \* \* shall be held as a separate fund and paid to the Treasury of the Philippine Islands \* \* \*<sup>1</sup>

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<sup>1</sup>Subsection (a) of § 602-½ was amended by § 702 of the Revenue Act of 1936, 26 U. S. C. A. Int. Rev. Acts, p. 955, and by § 703 of the Revenue Act of 1938, 26 U. S. C. A. Int Rev. Acts, p. 1145, but the amendments are not material here.

“(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business \* \* \*. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe.<sup>2</sup> The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.”

Los Angeles Soap Company, hereafter called taxpayer, was at all pertinent times a processor of coconut oil which was wholly the production of the Philippine Islands. Taxpayer's processing of such oil was the first domestic processing thereof. Taxpayer was therefore required to pay, with respect to such oil, the tax imposed by the first sentence of § 602½. For each of the 16 calendar months commencing with December, 1935, and ending with March, 1937, taxpayer filed with the collector of internal revenue for the Sixth Collection District of California—the district in which its principal place of business was located—a return showing the tax payable by taxpayer for that

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<sup>2</sup>By article 9 of Treasury Regulations 48, each processor was required to make a return for each calendar month and to file such return on or before the last day of the month following that for which it was made.

month. These taxes and the due dates thereof were as follows:

Month	Tax	Due Date
December, 1935	\$28,618.48	January 31, 1936
January, 1936	39,408.08	February 29, 1936
February, 1936	39,194.93	March 31, 1936
March, 1936	42,038.25	April 30, 1936
April, 1936	47,494.49	May 31, 1936
May, 1936	35,218.47	June 30, 1936
June, 1936	44,585.53	July 31, 1936
July, 1936	48,802.30	August 31, 1936
August, 1936	49,328.48	September 30, 1936
September, 1936	51,958.08	October 31, 1936
October, 1936	44,855.83	November 30, 1936
November, 1936	36,802.31	December 31, 1936
December, 1936	33,603.91	January 31, 1937
January, 1937	22,076.16	February 28, 1937
February, 1937	32,355.12	March 31, 1937
March, 1937	52,534.12	April 30, 1937

None of these taxes was paid when due. On February 11, 1936—11 days after the December, 1935, tax (\$28,618.48) became due and payable—taxpayer brought a suit in the District Court of the United States for the Southern District of California to enjoin and restrain the collector from collecting any tax then or thereafter payable by taxpayer under § 602½, on the ground that this section was unconstitutional. Thereupon, on February 11, 1936, the court issued a temporary restraining order restraining such collection, with the proviso that taxpayer should continue to file monthly returns and should "give security in the amount of \* \* \* \$28,618.48, said se-

curity to be in the form of a cashier's check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, clerk of the United States District Court, Southern District of California, said check to be deposited in the registry of the court by the said clerk pending the further order of this court, and \* \* \* deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns."

The collector moved to dismiss the suit. The motion was granted, and a decree dismissing the suit was entered.<sup>3</sup> Taxpayer petitioned for an order allowing an appeal from that decree and, pending such appeal, enjoining the collector from collecting any tax payable by taxpayer under § 602½. Such an order was granted on April 14, 1936, with the proviso that, pending its appeal, taxpayer should continue to file monthly returns and should "deposit in the registry of [the District] Court on or before the last day of each month the amount of tax disclosed by such monthly returns."

On May 3, 1937, while taxpayer's appeal was pending here, the Supreme Court held that § 602½ was constitutional.<sup>4</sup> In view of that holding, it was stipulated that taxpayer's appeal should be dismissed. It was dismissed on May 25, 1937.<sup>5</sup> Meanwhile taxpayer has deposited with the clerk of the District Court the amounts specified in the orders of February 11, 1936, and April 14, 1936—amounts equal to the taxes (exclusive of interest) payable

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<sup>3</sup>*Los Angeles Soap Co. v. Rogan*, D. C. S. D. Cal., 14 F. Supp. 112.

<sup>4</sup>*Cincinnati Soap Co. v. United States*, 301 U. S. 308.

<sup>5</sup>*Los Angeles Soap Co. v. Rogan*, 9 Cir., 90 F. (2d) 1012.

by taxpayer for the 16 months mentioned above.<sup>6</sup> These amounts aggregated \$648,874.54.

On June 8, 1937, the District Court ordered its clerk to deliver the \$648,874.54 to the collector, to be applied against any tax then due from taxpayer under § 602½. The order was complied with. Thus, on June 8, 1937, the collector received payment of the principal amount (\$648,874.54) of taxes payable by taxpayer for the 16 months mentioned above, but received no payment of interest thereon. Such interest, computed in accordance with § 602½, amounted to \$28,443.31.

On July 7, 1937, the collector collected the \$28,443.31 from taxpayer. Its claim for a refund having been denied, taxpayer brought a suit against the United States to recover the \$28,443.31 as having been illegally collected.<sup>7</sup> The United States answered, jury trial was waived, the case was tried by the court without a jury, an opinion was filed,<sup>8</sup> findings of fact and conclusions of law were stated, and judgment was entered in favor of taxpayer for \$28,372.06. From that judgment this appeal is prosecuted.

The trial court held, in substance and effect, that the 16 deposits made by taxpayer<sup>9</sup> constituted payments of its taxes for the 16 months mentioned above. Since the December, 1935, tax (\$28,618.48) became due on January

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<sup>6</sup>There were 16 deposits—one for each month. The first deposit (the one for December, 1935) was on February 13, 1936. Each subsequent deposit was on or before the last day of the month following that for which it was made.

<sup>7</sup>See § 24(20) of the Judicial Code, 28 U. S. C. A. § 41(20).

<sup>8</sup>Los Angeles Soap Co. v. United States, D. C. S. D. Cal., 56 F. Supp. 260.

<sup>9</sup>See footnote 6.

31, 1936, and the December, 1935, deposit was made on February 13, 1936, the court held that taxpayer owed no interest on the December, 1935, tax except that accruing between January 31, 1936, and February 13, 1936, which, according to the court's computation, was \$61.15.<sup>10</sup> Since deposits for the 15 subsequent months—January, 1936, to March, 1937, inclusive—were made on or before the due dates of the taxes for those months, the court held that taxpayer owed no interest on those taxes. Therefore, of the \$28,443.31 collected as interest on July 7, 1937, the court held that \$28,382.16 (\$28,443.31 less \$61.15) was illegally collected. Of this amount, the court found that \$10.10 had been paid, refunded or credited to taxpayer.<sup>11</sup> It therefore concluded that taxpayer was entitled to recover \$28,372.06 (\$28,382.16 less \$10.10). Hence the judgment here appealed from.

The court erred in holding that the deposits made by taxpayer constituted payments of its taxes. The deposits were made, not as tax payments, but as a means of preventing the collector from exacting such payments. By that means, taxpayer procured and kept in force the orders of February 11, 1936, and April 14, 1936, and so prevented the collection of its taxes until June 8, 1937. The deposits were in the nature of a cash bond and carried no more significance than would the giving of a surety bond. Such deposits are not payments.<sup>12</sup>

Taxpayer, in its brief, speaks of having made payments into court pursuant to the orders of February 11, 1936,

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<sup>10</sup>Actually, the interest accruing on the December, 1935, tax between January 31, 1936, and February 13, 1936, was \$128.28.

<sup>11</sup>The record discloses no basis for this finding.

<sup>12</sup>Rosenman v. United States, 323 U. S. 658.

and April 14, 1936. There were no such payments. The orders of February 11, 1936, and April 14, 1936, did not require taxpayer to make any payment, into court or otherwise. Instead, they required it to make deposits, and it did so. No payment was made until June 8, 1937.

Taxpayer points out that when it made deposits pursuant to the orders of February 11, 1936, and April 14, 1936, it lost the use of the amounts deposited just as it would have done had these amounts been paid to the collector. The fact remains, however, that these amounts were not paid to the collector until June 8, 1937. Until then, neither the United States nor the Philippine Islands had the use thereof.

Since its taxes for the 16 months mentioned above were not paid, in whole or in part, until June 8, 1937, and only the principal amount thereof (\$648,874.54) was paid on that date, taxpayer owed the interest (\$28,443.31) which the collector collected on July 7, 1937. There was and is no basis for holding that this interest, or any part thereof, was illegally collected.

Judgment reversed.

(Endorsed): Opinion. Filed Jan. 29, 1946. Paul P. O'Brien, Clerk.



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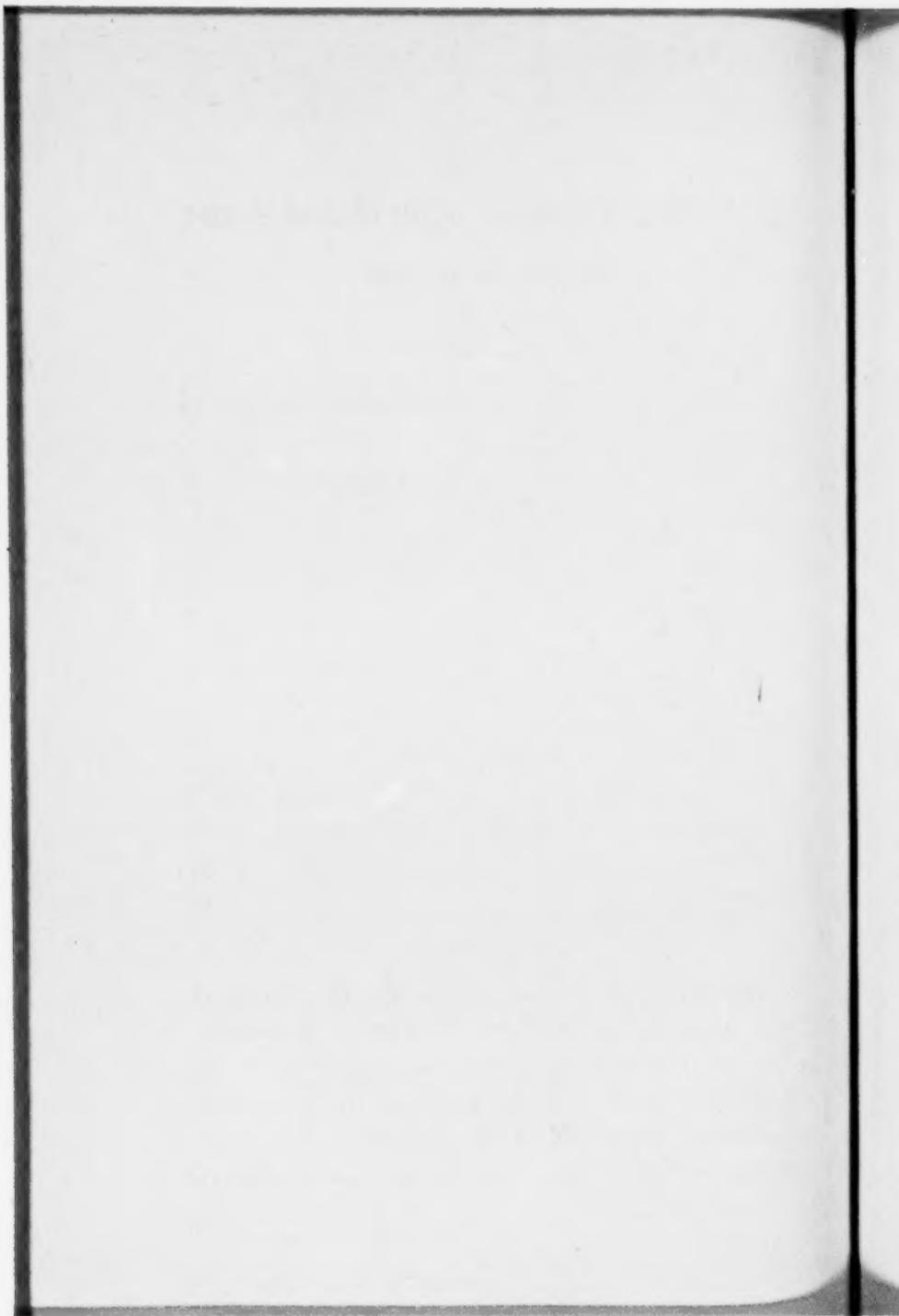
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(1)



**In the Supreme Court of the United States**

**OCTOBER TERM, 1945**

**No. 1091**

**LOS ANGELES SOAP CO., A CORPORATION, PETITIONER**  
*v.*

**UNITED STATES OF AMERICA**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT**

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

**OPINIONS BELOW**

The opinion of the District Court (R. 40-46) is reported in 56 F. Supp. 260. The opinion of the Circuit Court of Appeals (R. 90-98) is reported in 153 F. 2d 320.

**JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on January 29, 1946. (R. 98-99.) The petition for rehearing was denied on March 1, 1946. (R. 99.) The petition for a writ of certiorari was filed April 9, 1946. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

Whether the United States is entitled to interest on processing taxes assessed against taxpayer from the date the taxes were due until the release to the Collector of an amount equal to the taxes which had been deposited by the taxpayer with the District Court and impounded in the registry of the District Court by the court's own order, pending a proceeding by the taxpayer to test the constitutionality of the tax.

**STATUTE AND REGULATIONS INVOLVED**

The applicable statute and regulations are set forth in the Appendix, *infra*, pp. 11-13.

**STATEMENT**

The facts as found by the District Court (R. 47-58) may be summarized as follows:

This is a suit to recover \$28,443.31 collected from taxpayer as interest due on delinquent excise taxes. (R. 9, 37.)

Taxpayer, a manufacturer of soap, was subject to the provisions of Section 602½ of the Revenue Act of 1934, imposing an excise tax on the first domestic processing of coconut oil produced in the Philippine Islands. (R. 49.) On February 11, 1936, the taxpayer brought suit in the District Court for the Southern District of California to

enjoin the Collector from collecting these taxes then due or thereafter payable from taxpayer on the ground that Section 602½ was unconstitutional. (R. 49.) On the same day the District Court issued a temporary injunction restraining the collection of the tax on condition that taxpayer file monthly tax returns with the Collector, that it give security for previously accrued but unpaid taxes, amounting to \$28,618.48, by depositing in the registry of the court a cashier's check for that amount, and that it deposit monthly thereafter the amount disclosed by its monthly returns. (R. 50.) Pursuant to this order, the taxpayer made three payments into the court registry and filed appropriate returns with the Collector. (R. 50-51.)

After hearing, the District Court on April 1, 1936, entered a decree denying an injunction and dismissing the cause. (R. 51.) *Los Angeles Soap Co. v. Rogan*, 14 F. Supp. 112. Taxpayer then filed a petition to enjoin the collection of the taxes pending appeal of the case. (R. 51.) Such an order was granted on April 14, 1936, with the proviso that pending the appeal taxpayer should continue to file monthly returns and should deposit in the registry of the court on or before the last day of each month the amount of tax disclosed by the monthly returns. (R. 51.)

On May 3, 1937, while taxpayer's appeal was pending this Court upheld the constitutionality

of Section 602½ (*Cincinnati Soap Co. v. United States*, 301 U. S. 308), and on May 25, 1937, taxpayer's appeal was dismissed (R. 53.) During the 16-month period between commencement of the suit and dismissal of the appeal, taxpayer filed monthly returns with the Collector and made deposits in the registry of the court as required by the orders of February 11, 1936, and April 14, 1936. (R. 50-51, 52-53.) These deposits aggregated \$648,874.54 and this sum was delivered to the Collector on June 8, 1937, pursuant to the order of the District Court. (R. 52-56.)

The deposits paid to the Collector represented the principal amount of taxes due, but did not include any interest; interest on the various deposits computed in accordance with Section 602½ amounted to \$28,443.31. (R. 95.) Upon demand of the Collector the taxpayer paid this sum as interest on July 7, 1937. (R. 57.) The taxpayer's subsequent claim for refund of such interest was rejected and this proceeding was brought. (R. 57-58.) The judgment of the District Court in favor of the taxpayer (R. 61-62) was reversed by the Circuit Court of Appeals on the ground that the deposits into the registry of the District Court were not payment of the taxes due to the Collector as required by Section 602½, and hence that the collection of interest on such unpaid taxes was proper. (R. 97-98.)

**ARGUMENT**

This case does not warrant review by this Court; the decision below involves no conflict; it correctly interprets the interest provisions of Section 602½ of the Revenue Act of 1934 (Appendix, *infra*), and it is in accord with controlling principles recently announced by this Court. *Rosenman v. United States*, 323 U. S. 658; *Security Mills Co. v. Commissioner*, 321 U. S. 281.

Section 602½ is explicit in requiring the payment of taxes "to the collector of internal revenue" and the tax is made due and payable "to the collector" at the time fixed for filing returns. If the tax is not paid when due, the statute specifically requires that interest be added as part of the tax from the date the tax was due until actual payment is made. In this case the taxpayer did not make payments to the Collector as required by the statute, but deposited each month an amount equal to the taxes due in the registry of the District Court, pending the outcome of taxpayer's injunction suit to test the constitutionality of the levy. These deposits were not intended to discharge tax liability; the taxpayer was challenging the existence of such liability when the various deposits were made. The court in receiving the deposits was not acting as an agent of the United States to receive taxes but merely as a stake-holder to insure subsequent payment of the taxes if the constitutionality of the

tax were upheld. Accordingly, the court below was clearly correct in holding that under Section 602½ interest was properly assessed from the time the taxes were due under the statute until actual delivery of the deposits to the Collector in payment of such taxes. Then, for the first time, the taxes actually were paid to the Collector as required by the statute.

The decisions of this Court require the distinction drawn by the court below between actual payment of taxes and the deposit of funds as security to guarantee future payment of taxes which may be found to be due. *Rosenman v. United States, supra*; *Security Mills Co. v. Commissioner, supra*. See also *Dixie Pine Co. v. Commissioner*, 320 U. S. 516; *Massachusetts Bonding & Ins. Co. v. United States*, 97 F. 2d 879 (C. C. A. 9th). In the *Rosenman* case the taxpayer deposited funds with the Collector in anticipation of an assessment of estate tax and these funds were kept in a suspense account pending final determination of the amount due. This Court held that the statute of limitations on the taxpayer's claim for refund did not run from the date of the deposit but from the date the funds were actually applied in payment of the assessed tax. The deposit of funds was considered to be in the nature of a surety bond for later payment that did not discharge any tax obligation. The refusal to recognize the deposit as a tax payment in the *Rosenman* case is particu-

larly significant because the facts of this case in support of the contrary view which is advanced by this taxpayer are much weaker. Unlike the present case the money in the *Rosenman* case was deposited with the Collector, not a third party. And the deposit in that case was made in attempted satisfaction of a recognized tax liability, only the amount being disputed, whereas here, the taxpayer recognized no tax liability whatever. Clearly under the *Rosenman* case this taxpayer cannot be considered as having discharged its tax obligation, thereby preventing accrual of interest, when it deposited funds with the registry of the District Court.

Similarly, the *Security Mills* case, *supra*, compels the conclusion that only when the deposits in the instant case were turned over to the Collector did payment of the tax obligation occur, thereby stopping further accrual of interest. In the *Security Mills* case the taxpayer had obtained a temporary injunction which restrained the collection of processing taxes on condition that *pendente lite* the taxpayer file information returns and pay the amount of the tax into a depository. In denying the taxpayer's right currently to accrue and deduct the tax liability in controversy, this Court emphasized that taxpayer denied liability for and failed to pay the tax during the taxable year and hence was not in a position in its tax accounting to treat the Government's claim

as an accrued liability. If there is any merit in the taxpayer's contention here that payment into the court registry was payment of the tax, the taxpayer should be entitled to a deduction in its returns for the taxable years involved. Yet the deduction clearly is not allowable under the *Security Mills* case and the *Dixie Pine Co.* case, *supra*.

This case does not, as taxpayer argues (Br. 15-17) fall within the rule that when a debtor deposits the amount of his debt into court the running of interest thereon is suspended. The interpleader, bankruptcy, and condemnation cases cited by taxpayer have no application where, as here, all liability is denied and the suit instituted and the deposits made for the manifest purpose of preventing the Collector from immediately collecting the tax. In the interpleader cases, the debtor is ready and willing to pay and only judicial identification of the persons to receive and the amounts they are to receive. In those cases and the receivership and bankruptcy cases payment is prevented by circumstances beyond the debtor's own control. The taxpayer here was free to pay the tax and the question of constitutionality in a refund suit. In the condemnation cases, the sum deposited with the court by the Government as the estimated fair value of the lands taken, represents an acknowledged obligation which the creditor is at liberty

to accept. Interest is paid on any excess between the award made and the amount deposited, the only sum in real dispute. Further, special statutory requirements governing condemnation render inappropriate a comparison with interest problems arising in connection with Section 602½ taxes.

The taxpayer's assertion that interest should not be assessed against it because it lost the use of the money while on deposit with the court (Br. 18) is a curious distortion of relative equities. Cf. *John Hancock Mut. Life Ins. Co. v. Hurley*, 151 F. 2d 751 (C. C. A. 1st). Not only did taxpayer's action interrupt the orderly collection of tax revenue but the Government, no less than the taxpayer, was deprived of the use of the funds until the deposits were turned over to the Collector. Further, the taxpayer, not the Government, chose to institute injunction proceedings instead of paying the tax and seeking refund. There is no inequity to hold that taxpayer is bound by the consequences of its own choice. And, contrary to taxpayer's contention (Br. 20), it is not being penalized for testing the constitutionality of Section 602½. The interest here is not a penalty to coerce payment of the tax, as provided by Section 602½ (f), but compensation for the delay in making the funds available to the United States, as provided by Section 602½ (b). *United States v. Childs*, 266 U. S.

304; *Priess v. United States*, 42 F. Supp. 89 (E. D. Wash.); *United States v. Royal Indemnity Co.*, 116 F. 2d 247 (C. C. A. 2d).

**CONCLUSION**

The decision below is correct and involves no conflict. In view of the unequivocal interest requirements of Section 602½ and the decisions of this Court in *Rosenman v. United States, supra*, and *Security Mills Co. v. Commissioner, supra*, the issue presented does not call for review by this Court. The petition should therefore be denied.

Respectfully submitted.

J. HOWARD MCGRATH,  
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SEWALL KEY,  
*Acting Assistant Attorney General.*

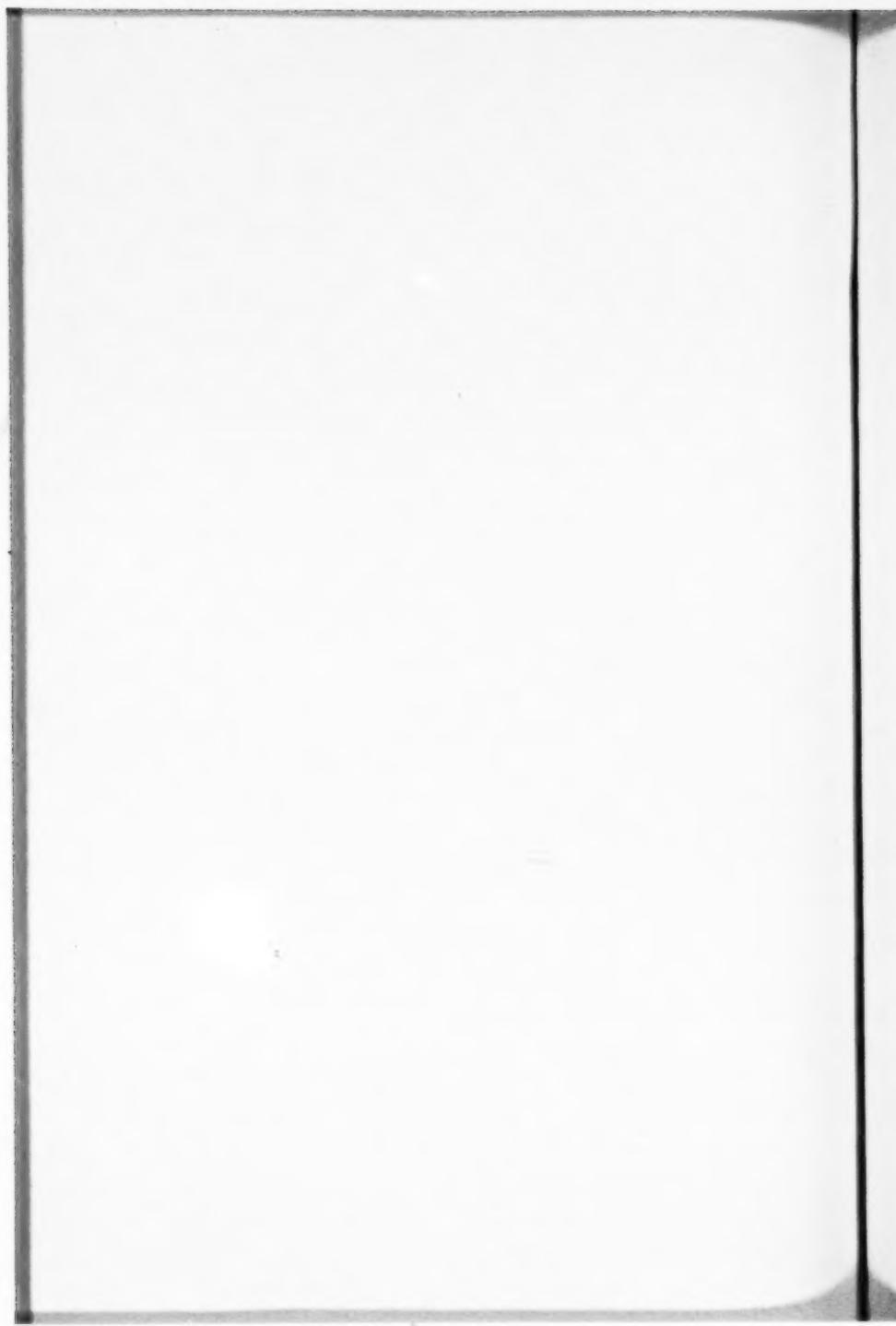
HELEN R. CARLOSS,

NORMAN S. ALTMAN,

*Special Assistants to the Attorney General.*

MAY 1946.





## APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

### SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the

enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secre-

tary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

\* \* \* \* \*

Treasury Regulations 48 (1934 ed.):

ART. 12. *Interest.*—The due date of the tax for the purpose of computing interest is the day upon which the return is required to be filed and the tax paid. If the tax is not paid at the time the return is required to be filed, there shall be added as part of the tax, interest computed at the rate of 1 per cent a month from the time the return is required to be filed until the tax is paid. For provisions relating to penalties, see article 21.